

ELLEN F. ROSENBLUM
Attorney General
MARC ABRAMS #890149
Assistant Attorney-in-Charge
Department of Justice
100 SW Market Street
Portland, OR 97201
Telephone: (971) 673-1880
Fax: (971) 673-5000
TRACY ICKES WHITE #904127
Senior Assistant Attorney General
Department of Justice
1162 Court Street NE
Salem, OR 97301
Telephone: (503) 947-4700
Fax: (503) 947-4797
Email: marc.abrams@doj.state.or.us
Tracy.I.White@doj.state.or.us

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BRIAN J. BOQUIST,

Plaintiff,

v.

**OREGON STATE SENATE PRESIDENT
PETER COURTNEY**, in his individual and
official capacities; **SENATOR FLOYD
PROZANSKI**, in his individual and official
capacities as Chairman of the Senate Special
Committee on Conduct, **SENATOR JAMES
MANNING**, in his individual and official
capacities as member of the Special Senate
Committee,

Defendants.

Defendants Peter Courtney, Floyd Prozanski, and James Manning¹ (“Defendants”), by
and through their attorneys Marc Abrams and Tracy I. White, answer plaintiff’s Fourth Amended
Complaint and set forth defenses as follows:

¹ Dexter Johnson, Jessica Knieling, Brenda Baumgart, and Melissa Healy having been dismissed
from this action by the United States Court of Appeals for the Ninth Circuit, No. 20-35080,
Opinion dated April 21, 2022.

GENERAL DENIAL

All matters not expressly admitted are hereby denied.

1.

Defendants admit the allegations in the first and second sentences of Paragraph 1.

Defendants admit that plaintiff was a member of the minority party in the 2019 legislative session and deny the remaining allegations in the third sentence of Paragraph 1. To the extent the allegations in the fourth sentence of Paragraph 1 are not legal conclusions to which no response is required, they are denied. Defendants admit that conditions were placed on plaintiff's entry into the Capitol, refer the Court to that document for a full and complete explanation of its contents, and deny the remaining allegations in the fifth sentence of Paragraph 1. To the extent the allegations in the sixth and seventh sentences of Paragraph 1 are not legal conclusions to which no response is required, they are denied.

JURISDICTION AND VENUE

2.

Defendants admit jurisdiction is proper in this Court and, to the extent the remaining allegations in Paragraph 2 are not legal conclusions to which no response is required, they are denied.

3.

Defendants admit jurisdiction is proper in this Court and, to the extent the remaining allegations in Paragraph 3 are not legal conclusions to which no response is required, they are denied.

4.

Defendants admit venue is proper.

PARTIES

5.

Defendants admit the allegations in Paragraph 5.

6.

Defendants admit the allegations in Paragraph 6.

FACTUAL ALLEGATIONS

7.

Defendants admit the allegations in Paragraph 7.

8.

Defendants do not know what plaintiff heard and therefore deny knowledge or information sufficient to form a belief as to the allegations in Paragraph 8 and therefore deny same.

9.

Defendants admit plaintiff addressed the floor statement in a subsequent conversation with Sen. Courtney, and deny the remaining allegations in Paragraph 9.

10.

Defendants admit the allegations in Paragraph 10 but deny report, complaint or charges were necessary.

11.

Defendants admit plaintiff said “Send bachelors and come heavily armed. I’m not going to be a political prisoner in the state of Oregon. It’s just that simple.” Defendants deny knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 11, and therefore deny same.

12.

Defendants deny knowledge or information sufficient to form a belief as to the allegations in Paragraph 12, and therefore deny same.

13.

Defendants admit the allegations in the first sentence of Paragraph 13. Defendants do not know what plaintiff expected, and therefore deny knowledge or information sufficient to form a

belief as to the allegations in the second sentence of Paragraph 13 and therefore deny same.

14.

Defendants admit fines were assessed for dereliction of duty on Senators who left the Capitol, state the fines were never collected, the check sent by plaintiff was returned undeposited, and deny the remaining allegations in the first three sentences of Paragraph 14. Defendants do not know what plaintiff expected, and therefore deny knowledge or information sufficient to form a belief as to the allegations in the fourth sentence of Paragraph 14 and therefore deny same.

15.

Defendants admit that Baumgart was retained to investigate plaintiff's statements, deny the verb "chose" and otherwise admit the allegations in Paragraph 15.

16.

Defendants refer the Court to the document for a full and complete explanation of its contents, and otherwise decline to plead as to the allegations in Paragraph 16.

17.

Defendants refer the Court to the document for a full and complete explanation of its contents, and otherwise decline to plead as to the allegations in Paragraph 17.

18.

Defendants refer the Court to the document for a full and complete explanation of its contents, and otherwise decline to plead as to the allegations in Paragraph 18.

19.

Defendants admit the allegations in the first sentence of Paragraph 19. Defendants deny the allegations in the second sentence of Paragraph 19.

20.

Defendants deny the allegations in Paragraph 20.

21.

Defendants admit the allegations in Paragraph 21.

22.

Defendants admit the allegations in Paragraph 22 but deny formal or informal complaints were necessary.

23.

Defendants deny the allegations in Paragraph 23.

24.

As defendants are not law enforcement professionals, they lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 24, and therefore deny same.

25.

Defendants deny the allegations in Paragraph 25.

26.

Defendants admit the Conduct Committee voted unanimously to require plaintiff to provide a 12-hour notice before entering the Capitol and deny the remaining allegations in Paragraph 26.

27.

Defendants admit the allegations in Paragraph 27 but deny formal complaints were necessary.

28.

Defendants admit the allegations in Paragraph 28 but deny formal complaints were necessary.

29.

Defendants admit the allegations in Paragraph 29

30.

Defendants admit the allegations in Paragraph 30.

31.

Defendants state that the 12-hour notice requirement is not being enforced so deny the allegations in Paragraph 31.

FIRST CLAIM FOR RELIEF

First Amendment Retaliation — 42 U.S.C. § 1983

32.

Defendants repeat and re-allege their responses to Paragraph 1 through 31 as if fully set forth herein

33.

To the extent the allegations in Paragraph 33 are not legal conclusions to which no response is required, they are denied.

34.

To the extent the allegations in Paragraph 34 are not legal conclusions to which no response is required, they are denied.

35.

To the extent the allegations in Paragraph 35 are not legal conclusions to which no response is required, they are denied.

36.

To the extent the allegations in Paragraph 36 are not legal conclusions to which no response is required, they are denied.

37.

To the extent the allegations in Paragraph 37 are not legal conclusions to which no response is required, they are denied.

38.

To the extent the allegations in Paragraph 38 are not legal conclusions to which no response is required, they are denied.

39.

To the extent the allegations in Paragraph 39 are not legal conclusions to which no response is required, they are denied.

SECOND CLAIM FOR RELIEF

First Amendment Freedom of Assembly — 42 U.S.C. § 1983

40.

Defendants repeat and re-allege their responses to Paragraph 1 through 39 as if fully set forth herein

41.

To the extent the allegations in Paragraph 41 are not legal conclusions to which no response is required, they are denied.

42.

To the extent the allegations in Paragraph 42 are not legal conclusions to which no response is required, they are denied.

43.

To the extent the allegations in Paragraph 43 are not legal conclusions to which no response is required, they are denied.

FIRST DEFENSE

Failure to State a Claim

44.

Plaintiff's claims for relief fail to state a claim upon which relief may be granted.

SECOND DEFENSE

Objective, Nondiscriminatory Reasons

45.

Defendants had valid, legitimate, objectively reasonable, non-discriminatory and non-retaliatory reasons for all actions taken regarding the terms and conditions of plaintiff's

licensure, and such actions were not based upon any improper motive or taken for any improper purpose.

THIRD DEFENSE

Good Faith Immunity

46.

All actions taken by the Defendants were at all times privileged, reasonable and appropriate, and were taken in objective good faith, and Defendants are therefore entitled to good faith immunity from plaintiff's 42 U.S.C. § 1981, §1983, § 1985 and § 1986 claims.

FOURTH DEFENSE

Qualified Good Faith Immunity

47.

To the extent that any action complained of herein violated a right of plaintiff, under the circumstances presented, no reasonable public official could have understood that their conduct represented a violation of plaintiff's clearly established rights. Defendants are therefore entitled to qualified good faith immunity.

FIFTH DEFENSE

Plaintiffs Responsible for Harm

48.

Some or all of the harm complained of was a result of plaintiff's own actions, inactions, or participation in the activities complained of.

SIXTH DEFENSE

Absolute Immunity

49.

Defendants are entitled to absolute quasi-prosecutorial or quasi-judicial immunity from plaintiffs' federal claims.

SEVENTH DEFENSE

Legislative Immunity

50.

Defendants are entitled to absolute legislative immunity for their performance of duties during the legislative session and for the purposes of managing the Legislative Assembly.

WHEREFORE Defendants pray as follows:

1. That plaintiff be denied recovery, or the relief requested upon the claims set forth in the Fourth Amended Complaint and that the Fourth Amended Complaint be dismissed with prejudice in its entirety;
2. That the defendants recover their reasonable costs and attorneys' fees expended in defense of this matter; and
3. That the defendants be granted such other and further relief as this Court deems just and equitable.

DATED November 3, 2022.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

s/ Marc Abrams

MARC ABRAMS #890149
Assistant Attorney-in-Charge
TRACY ICKES WHITE #904127
Senior Assistant Attorney General
Trial Attorneys
Marc.Abrams@doj.state.or.us
Tracy.I.White@doj.state.or.us
Of Attorneys for Defendants